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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,541	04/25/2008	Smadar Nehab	CERT0004	1526

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EXAMINER
CHEUNG, MANKO

ART UNIT	PAPER NUMBER
2863	

NOTIFICATION DATE	DELIVERY MODE
09/04/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

eptomatters@glenn-law.com

	Application No.	Applicant(s)
Office Action Summary	10/599,541	NEHAB ET AL.
	Examiner	Art Unit	
	Manko Cheung	2863	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

> A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
> WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
>   after SIX (6) MONTHS from the mailing date of this communication.
> - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
> - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
>   Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
>   earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>25 April 2008</u>.

2a) ☐ This action is **FINAL.**   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-29</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-29</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on <u>29 September 2006</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>29 September 2006</u>.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____

DETAILED ACTION

Inventorship

1.   This application currently names joint inventors. In considering patentability of
the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of
the various claims was commonly owned at the time any inventions covered therein
were made absent any evidence to the contrary. Applicant is advised of the obligation
under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was
not commonly owned at the time a later invention was made in order for the examiner to
consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g)
prior art under 35 U.S.C. 103(a).

Specification

2.   The disclosure is objected to because of the following informalities:

The present application claims the benefit of U.S. provisional patent application
No. 60/556,541, filed March 29, 2004. Such statement should be included in the
beginning of the specification.

Page 4, line 24, "message the bus 240" should be ---the message bus 240---.

Page 6, line 13, "repots" should be ---reports---.

Page 8, line 23, serial no. should be ---11/092,447---.

Page 9, line 5, serial no should be ---11/093,569---.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

3.　　35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 12-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

It has been held that the first step in determining whether a claim recites patent eligible subject matter is to determine whether the claim falls within one of the four statutory categories of invention recited in 35 USC § 101: process, machine, manufacture and composition of matter. The latter three categories define "things" or "products," while a "process" consists of a series of steps or acts to be performed. For purposes of § 101, a "process" has been given a specialized, limited meaning by the courts.

Based on Supreme Court precedent and recent Federal Circuit decisions, it has been held that a § 101 process must (1) be tied to another statutory class (a particular machine or apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101 and should be rejected as being directed to non-statutory subject matter. Thus, to qualify as a § 101 statutory process, the claim ***should*** <u>positively recite</u> the other statutory class (the thing or product) to which it is tied, ***for example*** by <u>identifying the apparatus</u> that accomplishes

the method steps, or positively recite the subject matter that is being transformed, *for example* by identifying the material that is being changed to a different state. (emphasis added).

Insignificant extra-solution activity will not transform an unpatentable principle into patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such a data gathering or outputting, is not sufficient to pass the test.

The step of intercepting message is considered as insignificant extra solution activity and the remaining step does not require the machine used for intercepting messages to perform the job.

Therefore, Claims 12-21are only drawn to a process that is not tied to another statutory class, either explicitly or inherently, and that does not transform any subject matter to a different state or thing. As such, claims 12-21 are rejected under 35 U.S.C. 101 as being drawn to non-statutory subject matter.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5.   **Claim 1-3, 5, 7, 8, 10-16 and 18-29 are rejected under 35 U.S.C. 102(e) as**

being anticipated by McGee et al. (U.S. Patent Application Publication No.

2003/0110007).

 Regarding claim 1, McGee et al (hereinafter McGee) discloses an apparatus

(figure 1 of McGee) for detecting performance, availability and content deviations in

enterprise software applications [paragraph 0053, lines 1-5], comprising:

 a plurality of data collectors (data adapters 108 in figure 1) for intercepting

messages exchanged between independent services (e.g. operating system, web

server, or database server) in an enterprise software application [paragraph 0057]; and

 an analyzer (metric collection 102, metric analysis 104 and metric reporting 106

as a whole is an analyzer) for determining a baseline (the metric in McGee is baseline)

for said enterprise software application and for detecting deviations from said baseline

[paragraph 0058].

 Regarding claim 2, McGee discloses a graphical user interface (metric reporting

module 106 in figure 1) for displaying deviations from said baseline in said enterprise

software application [paragraph 0064].

 Regarding claim 3, McGee discloses:

 a collector manager (metric collection 102 in figure 1) for controlling said plurality

of data collectors (data adapters 108 in figure 1) [paragraph 0057];

a correlation engine (event correlation 118 and metric correlation 116 in figure 1) for correlating streams of said messages to a transaction (a significant event is a transaction) [paragraph 0060 and 0061];

a statistical processor (dynamic threshold computation 216 in figure 2) for collecting real-time statistics (current time on line 6 of paragraph 0070 means real time] on entities within said enterprise software application [paragraph 0068, lines 1-8; and paragraph 0070] ;

a baseliner (dynamic threshold check 208 in figure 2 and figure 11) for determining at least said baseline (the metric is determined by comparing against the previously computed threshold), wherein said baseline represents a normal behavior of said entities within said enterprise software application [paragraph 0067 and paragraph 0218];

a fault prediction and detection engine (metric correlation 116 in figure 1 and baseline filter A 308 in figure 2) for performing an early detection of deviations from said baseline in said enterprise software application [paragraph 0060 and paragraph 0076]; and

a presentation and alerts engine (action management 122 in figure 1) for generating reports and alerts for display on said GUI [paragraph 0063].

Regarding claim 5, McGee discloses everything claimed as applied above (see claim 3).   In addition, McGee discloses the analyzer further comprising:

a root cause analyzer (Root Cause Analysis 120 in figure 1) for automatically

providing a detailed analysis of a root cause of each fault detected by said FPDE

[paragraph 0062 and paragraph 0266, lines 1-3].

Regarding claim 7, McGee discloses everything claimed as applied above (see

claim 3). In addition, McGee discloses said FPDE (metric correlation 116 in figure 1

and figure 14) performing early detection of any of:

operation faults or decrement in performance (out-of-tolerance metrics indicates

abnormal/decrement and operation fault in performance) of said user enterprise

software application [paragraph 0228 and 0229].

Regarding claim 8, McGee discloses everything claimed as applied above (see

claim 7). In addition, McGee discloses the operation faults are detected during

production (production is just a process; and monitoring is production/process of ESA)

of said enterprise software application (the out-of-tolerance metric is the measured

metric results from the performance monitoring of the enterprise software application,

thus it is a production of the enterprise software application) [paragraph 0053, lines 1-

10].

Regarding claim 10, McGee discloses everything claimed as applied above

(see claim 1). In addition, McGee discloses said baseline is determined based on *any*:

context of said messages (metrics, e.g. disk transfer rate and process queue depths are

context of message) and real-time statistics [paragraph 0054, lines 7-14; also see figure 4A and 4B for real time statistics].

Regarding claim 11, McGee discloses everything claimed as applied above (see claim 10). In addition, McGee discloses said real-time statistics comprise *any of*:

throughput measurements and average response time measurements (metrics in McGee means throughput and response time) of business transactions [paragraph 0007, lines 1-8].

Regarding claim 12 and 22, McGee discloses a method and program of instructions for detecting performance, availability and content deviations in enterprise software applications [paragraph 0053, lines 1-5], comprising the steps of:

intercepting messages exchanged between independent services (e.g. operating system, web server, or database server) in an enterprise software application [paragraph 0057];

correlating said messages (metrics, and metrics is defined in paragraph 0007) into a transaction [paragraph 0227; also see figure 14];

determining a baseline (threshold) for said enterprise software application [paragraph 0067]; and

detecting deviations from said baseline [paragraph 0076, lines 1-4].

Regarding claim 13 and 23, McGee discloses everything claimed as applied above (see claims 12 and 22). In addition, McGee discloses a method and program of instructions for detecting deviations further comprising the step of:

performing an early detection of any of operation faults (bugs) in said enterprise software application and decrement in performance (out-of-tolerance metrics indicates abnormal/decrement and operation fault in performance) of said enterprise software application [paragraph 0228 and 0229].

Regarding claim 14, McGee discloses everything claimed as applied above (see claims 13). In addition, McGee discloses a method and program of instructions for detecting said operation faults during production of said enterprise software application (the out-of-tolerance metric is the measured metric results from the performance monitoring of the enterprise software application, thus it is a production of the enterprise software application) [paragraph 0053, lines 1-10].

Regarding claim 15 and 24, McGee discloses everything claimed as applied above (see claims 12 and 22). In addition, McGee discloses a method and program of instructions for displaying information (by metric reporting 106 in figure1) about any of said operation faults and performance evaluation to a user [paragraph 0064].

Regarding claim 16 and 25, McGee discloses everything claimed as applied above (see claims 15 and 24). In addition, McGee discloses a method and program of

instructions for displaying said information to said user through a series of graphical

user interface (GUI) views [paragraph 0064].

Regarding claim 18 and 26, McGee discloses everything claimed as applied

above (see claims 12 and 22). In addition, McGee discloses a method and program of

instructions for correlating said messages further comprising the steps of:

assembling messages related to an instance of a transaction [paragraph 0238,

lines 1-3];

determining an execution flow graph [the time line of data being collected is a

flow graph] of a transaction instance [paragraph 0238, line four to last line; also see

figure 15 and 17];

mapping said execution flow graph with similar transaction instances (each time

corresponds to different transaction instances because as time change, the monitored

system changes) [paragraph 0239, lines 1-11]; and

grouping said transaction instances to create an execution path (links between

nodes are paths) that identifies said transaction [paragraph 0025 and paragraph 0258;

also see figure 17].

Regarding claim 19 and 27, McGee discloses everything claimed as applied

above (see claims 12 and 22). In addition, McGee discloses a method and program of

instructions for determining said baseline based on *any of* content of said messages,

context of said messages (metrics, e.g. disk transfer rate and process queue depths are

context of message), and real-time statistics [paragraph 0054, lines 7-14; also see

figure 4A and 4B for real time statistics].

Regarding claim 20 and 28, McGee discloses everything claimed as applied

above (see claims 19 and 27). In addition, McGee discloses a method and program of

instructions, wherein said real-time statistics (real-time statistic is just any statistic

collected in any time) comprise any of: throughput measurements and average

response time measurements (metrics in McGee means throughput and response time)

[paragraph 0054].

Regarding claim 21 and 29, McGee discloses everything claimed as applied

above (see claims 12 and 22). In addition, McGee discloses a method and program of

instructions for performing a root cause analysis (by Root Cause Analysis 120 in figure

1) to detect a root cause for detected baseline deviations [paragraph 0062 and

paragraph 0266, lines 1-3].

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

7.   **Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGee et al. (U.S. Patent Application Publication No. 2003/0110007).**

Regarding claim 4, McGee discloses everything claimed as applied above (see claim 3).

However, McGee fails to explicitly disclose an analytic processor for analyzing overall activity of said transactions (significant event) of said enterprise software application.

McGee discloses many steps for analyzing the transactions (significant event). For example, last four lines paragraph 0054, there is a graphical user interface that highlight the significant event; in paragraph 0061, the significant event was converted from groups of events. Therefore, it is obvious that McGee has a processor for analyzing the overall activities (any activities related to analyzing) of the transaction (significant event).

Regarding claim 6, McGee discloses everything claimed as applied above (see claim 3).

However, McGee fails to explicitly disclose the capture messages are transmitted using communication protocols comprising any of: a simple object access protocol (SOAP); a hypertext transfer protocol (HTTP); an extensible markup language (XML); a Microsoft message queuing (MSMQ);and a Java message service (JMS).

It is well known in the art that HTTP is used in communication protocols; it is equivalent to SOAP, XML, MSMQ, JMS and using any one of the communication protocol only involves routine skill in the art

8.   **Claims 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGee et al. (U.S. Patent Application Publication No. 2003/0110007) in view of Shahindoust et al. (U.S. Patent Application Publication No. 2003/0184783).**

Regarding claim 9 and 17, McGee discloses everything claimed as applied above (see claims 1 and 12).

McGee fails to expressly disclose the apparatus and the method for receiving said messages through an application programming interface (API).

Shahindoust et al discloses a method for using a messaging application programming interface that facilitates communication between sub-components [page 1 of shahindoust, last two lines of paragraph 0021 to page 2, first four lines of paragraph 0021].

It would be obvious to a person of ordinary skill in the art at the time the invention was made to use a well known application programming interface as taught by Shahindoust for receiving messages because it is a standard way of providing communication services to applications so that they can send and receive blocks of data directly from within applications [page 1 of shahindoust, last two lines of paragraph 0021 to page 2, first four lines of paragraph 0021]. Such a modification would allow the applications in the enterprise software application (e.g. operating system, web server or database server in paragraph 0057) of McGee effectively communication to each other.

Conclusion

9.   The prior art made of record and not relied upon is considered pertinent to
applicant's disclosure.

        U.S. Patent No. 6,463,470 to Mohaban et al. teaches an apparatus for storing
policies for policy based management and the policies could be retrieved by an
application program, an enterprise software application (abstract and column 10, lines
29-30).

        Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Manko Cheung whose telephone number is (571) 270-
7917. The examiner can normally be reached on Mon-Thur 9:30-16:00.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Drew A. Dunn can be reached on (571) 272-2312. The fax phone number
for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M.C./

August 26, 2009

<div align="right">

Drew A. Dunn
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Supervisory Patent Examiner, Art Unit 2863

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